

Stricken language would be deleted from and underlined language would be added to present law.  
Act 820 of the Regular Session

State of Arkansas *As Engrossed: S2/20/17 S3/9/17 S3/13/17 S3/14/17 S3/15/17*  
*H3/17/17*

91st General Assembly  
Regular Session, 2017

# A Bill

SENATE BILL 339

By: Senator J. Hutchinson  
By: Representative Hammer

## For An Act To Be Entitled

AN ACT TO AMEND THE PRESCRIPTION DRUG MONITORING PROGRAM TO MANDATE PRESCRIBERS CHECK THE PRESCRIPTION DRUG MONITORING PROGRAM WHEN PRESCRIBING CERTAIN MEDICATIONS; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE PRESCRIPTION DRUG MONITORING PROGRAM TO MANDATE PRESCRIBERS CHECK THE PRESCRIPTION DRUG MONITORING PROGRAM WHEN PRESCRIBING CERTAIN MEDICATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-7-604(d), concerning the requirements for the Prescription Drug Monitoring Program, is amended to read as follows:

(d)(1) Practitioners Except as required in subdivision (d)(2) of this section, practitioners are encouraged to access or check the information in the controlled substance database created under this subchapter before prescribing, dispensing, or administering medications.

(2)(A) A prescriber shall check the information in the Prescription Drug Monitoring Program when prescribing:

(i) An opioid from Schedule II or Schedule III for every time prescribing the medication to a patient; and

(ii) A benzodiazepine medication for the first time prescribing the medication to a patient.



(B) A licensing board that licenses practitioners who have the authority to prescribe shall adopt rules requiring the practitioners to check the information in the Prescription Drug Monitoring Program as described in subdivision (d)(2) of this section.

(C) This subdivision (d)(2) does not apply to:

(i) A practitioner administering a controlled substance:

(a) Immediately before or during surgery;

(b) During recovery from a surgery while in a healthcare facility;

(c) In a healthcare facility; or

(d) Necessary to treat a patient in an emergency situation at the scene of an emergency, in a licensed ground ambulance or air ambulance, or in the intensive care unit of a licensed hospital;

(ii) A practitioner prescribing or administering a controlled substance to:

(a) A palliative care or hospice patient; or

(b) A resident in a licensed nursing home facility; or

(iii) Situations in which the Prescription Drug Monitoring Program is not accessible due to technological or electrical failure.

(D) The State Board of Health may amend, by rule, the exemptions listed in subdivision (d)(2)(C) of this section upon a recommendation from the Director of the Department of Health and a showing that the exemption or lack of exemption is unnecessarily burdensome or has created a hardship.

(3) A licensed oncologist shall check the Prescription Drug Monitoring Program when prescribing to a patient on an initial malignant episodic diagnosis and every three (3) months following the diagnosis while continuing treatment.

SECTION 2. Arkansas Code § 20-7-607(a)(1), concerning providing prescription monitoring information to the Prescription Drug Monitoring Program, is amended to read as follows:

(a)(1)(A)(i) The Department of Health ~~may~~ shall review the Prescription Drug Monitoring Program information, including without limitation a review to identify information that appears to indicate whether a person ~~may be~~ is obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances based on prescribing criteria determined by the Director of the Department of Health upon consultation with the Prescription Drug Monitoring Program Advisory Committee.

(ii) The prescribing criteria shall be posted on the website of the department and be available in print upon request.

(B) If the information appears to indicate misuse or abuse may have occurred, the department shall notify the practitioners and dispensers who have prescribed or dispensed in the following manner:

(i) The department shall provide quarterly reports to the individual practitioners and dispensers; and

(ii) If after twelve (12) months of providing quarterly reports to the practitioners and dispensers, the information appears to indicate misuse or abuse may be continuing, the department shall send a report to the licensing boards of the practitioner or dispenser who prescribed or dispensed the prescription.

(C) If information of misuse or abuse is identified, the department shall notify the practitioners and dispensers who prescribed or dispensed the prescriptions and the Office of Diversion Control of the United States Drug Enforcement Administration.

(D) On or before January 1, 2019, the department shall contract with a vendor to make the Prescription Drug Monitoring Program interactive and to provide same-day reporting in real-time, if funding and technology are available.

SECTION 3. Arkansas Code § 20-7-611, concerning unlawful acts and penalties regarding the Prescription Drug Monitoring Program, is amended to add an additional subsection to read as follows:

(i) A practitioner who purposely fails to access the Prescription Drug Monitoring Program as required by § 20-7-604(d) is subject to disciplinary action by the licensing board of the practitioner.

SECTION 4. Arkansas Code § 20-7-605(c), concerning the membership of

*the Prescription Drug Monitoring Program Advisory Committee, is amended to read as follows:*

*(c) The committee shall consist of:*

*(1) One (1) representative designated by each of the following organizations:*

- (A) The Arkansas Academy of Physician Assistants;*
- (B) The Arkansas Association of Chiefs of Police;*
- (C) The Arkansas Drug Director;*
- (D) The Arkansas Medical Society;*
- (E) The Arkansas Nurses Association;*
- (F) The Arkansas Optometric Association;*
- (G) The Arkansas Osteopathic Medical Association;*
- (H) The Arkansas Pharmacists Association;*
- (I) The Arkansas Podiatric Medical Association;*
- (J) The Arkansas Prosecuting Attorneys Association;*
- (K) The Arkansas Sheriffs' Association;*
- (L) The Arkansas State Dental Association;*
- (M) The Arkansas Veterinary Medical Association;*
- (N) The State Board of Health; and*
- (O) The Arkansas Public Defender Commission;*

*(2) One (1) mental health provider or certified drug and alcohol counselor; ~~and~~*

*(3) One (1) consumer appointed by the Governor;*

*(4) The chair of the Arkansas State Medical Board or his or her designee who is also a member of the Arkansas State Medical Board; and*

*(5) The chair of the Arkansas State Board of Dental Examiners or his or her designee who is also a member of the Arkansas State Board of Dental Examiners.*

*SECTION 5. Arkansas Code § 17-95-303, concerning the powers and duties of the Arkansas State Medical Board, is amended to add an additional subdivision to read as follows:*

*(11) Promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board.*

*SECTION 6. Arkansas Code § 10-3-309(c), concerning the review and*

approval of proposed state agency rules by the Legislative Council, is amended to read as follows:

(c)(1) A state agency shall file a proposed rule with the Legislative Council at least thirty (30) days before the expiration of the period for public comment on the rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., or other laws or policies pertaining to the rulemaking authority of that state agency.

(2) The Legislative Council shall assign proposed rules to the Administrative Rules and Regulations Subcommittee of the Legislative Council.

(3)(A)(i) The proposed rule shall be reviewed by the Administrative Rules and Regulations Subcommittee of the Legislative Council.

(ii) When reviewing a rule under subdivision (c)(3)(A)(i) of this section, the Administrative Rules and Regulations Subcommittee of the Legislative Council shall allow members of the public a reasonable opportunity to comment on the proposed rule.

(B)(i)(a) Except as set forth in subdivision (c)(3)(B)(ii) of this subsection, upon upon conclusion of the review of the proposed rule by the Administrative Rules and Regulations Subcommittee of the Legislative Council, the proposed rule shall be considered approved unless a majority of a quorum present request that the Administrative Rules and Regulations Subcommittee of the Legislative Council vote on the issue of approving the proposed rule.

~~(ii)(b)~~ If the Administrative Rules and Regulations Subcommittee of the Legislative Council votes on the issue of approving the proposed rule, the proposed rule shall be approved unless a majority of a quorum present vote for the proposed rule to not be approved.

(ii) A proposed rule submitted by the State Board of Health under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the requirements of the Prescription Drug Monitoring Program, shall be considered reviewed and approved by the subcommittee upon an affirmative vote of three-fourths (3/4) of the members present when a quorum is present.

(4)(A)(i) Except as set forth in subdivision (c)(4)(B) of this subsection, A a proposed rule approved by the Administrative Rules and Regulations Subcommittee of the Legislative Council shall be considered approved by the Legislative Council unless a majority of a quorum present request that the Legislative Council vote on the issue of approving the

proposed rule.

~~(B)(ii)~~ *If the Legislative Council votes on the issue of approving the proposed rule, the proposed rule shall be approved unless a majority of a quorum present vote for the proposed rule to not be approved.*

(B) A proposed rule submitted by the State Board of Health under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the requirements of the Prescription Drug Monitoring Program, shall be considered reviewed and approved by the Legislative Council upon an affirmative vote of three-fourths (3/4) of the members present when a quorum is present.

*SECTION 7. Arkansas Code § 10-3-309(f), concerning a vote not to approve a state agency rule, is amended to read as follows:*

*(f)(1) A committee or subcommittee under this section may vote to not approve a rule under this section only if the rule is inconsistent with:*

*(A) State or federal law; or*

*(B) Legislative intent.*

*(2) A committee or subcommittee under this section voting not to approve a rule under this section shall state the grounds under subdivision (f)(1) of this section when not approving a rule.*

*(3) A committee or subcommittee under this section considering a rule submitted in accordance with Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the Prescription Drug Monitoring Program, is not required to state the grounds required under subdivision (f)(1) when not approving a rule.*

*SECTION 8. Arkansas Code § 17-82-208, concerning the rules and regulations of the Arkansas State Board of Dental Examiners, is amended to add an additional subsection to read as follows:*

*(e) The board shall promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board.*

*SECTION 9. Arkansas Code § 17-87-203, concerning the powers and duties of the Arkansas State Board of Nursing, is amended to add an additional subdivision to read as follows:*

*(21) Promulgate rules limiting the amount of Schedule II*

narcotics that may be prescribed and dispensed by licensees of the board.

SECTION 10. Arkansas Code § 17-90-204, concerning the powers and duties of the State Board of Optometry, is amended to add an additional subdivision to read as follows:

(8) Promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board.

SECTION 11. Arkansas Code § 17-92-205, concerning the rules and regulations of the Arkansas State Board of Pharmacy, is amended to add an additional subsection to read as follows:

(d) The board shall promulgate rules limiting the amount of Schedule II narcotics that may be dispensed by licensees of the board.

SECTION 12. Arkansas Code § 17-101-203, concerning the powers and duties of the Veterinary Medical Examining Board, is amended to add an additional subdivision to read as follows:

(12) Promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board.

/s/J. Hutchinson

**APPROVED: 04/03/2017**